IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 289 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MANUBHAI P THAKKAR

Appearance:

1. Criminal Appeal No. 289 of 1991

MS HARSHA DEVANI A.P.P. for Appellant No.

MR PM THAKKAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 01/07/2004

ORAL JUDGEMENT

The State of Gujarat has filed this appeal under Section 378 of the Criminal Procedure Code, 1973 challenging the judgment and order of acquittal passed by

the learned Magistrate, First Class at Gandhinagar, dated 17th July, 1990 in Criminal case no.1147/1986. The present respondent is original accused no. 2.

2. The facts in short can be stated as under :-

2.1. Prosecution witness Manilal Hargovandas Patel, the Food Inspector, while he was on his usual round on 6th November, 1985, had visited the shop of accused no. 1 at about 8:30 a.m. in company of Govindbhai Patni. Accused no. 1 had grocery shop. The Food Inspector expressed his desire to purchase sample of red chilli powder which was kept in the shop for sale. He was given written intimation with regard to analysis of the sample by the Food Inspector and subsequently, the sample was purchased. The Food Inspector was also informed by accused no. 1 that he was the owner of the shop and at the time of collection of the sample, accused no. 1 produced bill regarding purchase of the said commodity from accused no. 2 i.e. present respondent. The Food Inspector divided the sample into three equal parts and filled each part in three separate plastic bags. He thereafter sealed them in accordance with the provisions of Prevention of Food Adulteration Rules and paid Rs.14=40 to accused no. 1 towards the purchase price of chilli. He was given receipt of by accused no. 1 for receiving money from the Food Inspector.

2.2. The Food Inspector thereafter sent one sample for analysis to Public Analyst at Rajkot and two samples were sent to the Local Health Authority at Ahmedabad. Later on 4th December, 1985, he received report from the laboratory which revealed that the sample did not conform to the standard prescribed under the provisions of Prevention of Food Adulteration Act as well as Rules [hereinafter referred to as "the Act" and "the Rules"] and it was adulterated. On receiving the report, relevant papers together with the report of the Public Analyst was forwarded to the Local Health Authority for obtaining sanction for lodging complaint. The sanction was duly accorded by the Local Health Authority vide communication dated 5th February, 1986. On receiving the sanction, the Food Inspector lodged complaint in the Court of learned Judicial Magistrate First Class, Gandhinagar on 12th March, 1986. He also despatched a copy of the report alongwith the complaint to accused no. 1 and the present respondent in accordance with Section 13 (1) of the Act. On receipt of the report and the complaint, accused no. 1 appeared before the learned Magistrate and submitted an application requesting the Court to send the sample for fresh analysis to Director

of Central Food Laboratory. Accordingly, one of the samples was collected from the Local Health Authority. It was thereafter sent by the learned Magistrate to the office of Director of Central Food Laboratory. In due course, report was received. The same also indicated that the offending article was adulterated.

3. At the trial, both the accused pleaded not guilty and claim to be tried. The prosecution in support of his case, placed reliance on the oral as well as documentary evidence. It examined the Food Inspector and also Chandubhai Jivanlal who acted as panch at the time of collection of the sample from the shop of accused no.1. Documentary evidence in the form of both the analysis report, complaint, panchnama etc., were produced by the Food Inspector during recording of the evidence.

3.1. It appears that at the trial, accused no. 1 who took the defence of warranty and tried to put up the case to the effect that the offending article was purchased from accused no. 2 i.e. present respondent and it was kept in the same condition when the sample was taken by the Food Inspector. So far respondent is concerned, it had denied to have sold any chilli powder to accused no. 1. So far as accused no. 1 is concerned, he had placed reliance on the bill that was received by it, which according to him was in relation to the purchase of offending chilli powder. That bill is produced on record at Exh. 35. At the end of the trial, the learned Magistrate came to the conclusion that the Food Inspector had committed several breach of mandatory provisions and for that reason the prosecution failed and the accused were ultimately acquitted.

4. The State of Gujarat has preferred appeal against respondent original accused no. 2 alone and no appeal has been preferred against the order of acquittal passed in favour of original accused no. 1

4.1. Ms. Harsha Devani learned A.P.P. has challenged the judgment on several aspects. According to her, the conclusion drawn by the learned Magistrate in relation to the breach of mandatory provisions by the Food Inspector are not proper. According to her, compliance thereof is adequately substantiated by the evidence on record. It is her say that there is full compliance of each and every requirement of the Act as well as Rules and the view taken by the learned Magistrate is quite erroneous. She has also submitted that considering Exh. 35, it is very clear that accused no. 2 i.e. the respondent had given warranty regarding the offending material in favour

of original accused no. 1 and when the sample was collected from the sealed packet containing chilli powder, the respondent becomes responsible for committing the said offence under Section 7 read with Section 17 of the Act.

4.2. As against that, Mr. H.N. Joshi learned advocate appearing for the respondent has supported the judgment and has submitted that this being an acquittal appeal, there is hardly any scope for this Court to interfere with the judgment and order passed by the learned Magistrate, more particularly when there is no perverse finding given by it. He has further submitted that so far as the bill in question is concerned, i.e. Exh. 35, there is nothing on record to connect the bill with the offending article. According to him, even the bill itself does not give any indication that it relates to offending article. He has, therefore, submitted that the prosecution has not been able to establish the guilt of the respondent beyond reasonable doubt and the view taken by the learned Magistrate is proper.

5. The bill Exh. 35 is said to have been issued by respondent to accused no. 1 at the time he purchased the offending article. It shows that it is dated 4th September, 1985 and number is 3508. It is in the name of Jayshree Trading Company. So far as description of the item sold is concerned, item no. 1 is with regard to Turmeric bag - 1, Weight 10 Kg. for the value of Rs. 175=00; item no. 2 is Mayur - 250 x 80-20, 500 x 16, weight 28 Kgs., for the value of Rs.602=00. The total amount indicated in the bill is Rs.778=00. It is pertinent to note, that in the bill in no manner it is indicated that it is in respect of chilli powder that was purchased by accused no. 1 from the respondent. Attempt has been made by the learned A.P.P. to show that Mayur is the brand name of the commodities sold by the respondent. That however, does not take the case of the prosecution any further. It is quite possible that in that brand name, some other commodity may have been purchased by accused no. 1 on that day. When there is no conclusive proof connecting this bill with the offending material, it can well be said that the prosecution had failed to that extent. If that be so there is no case against the respondent. The bill also does not indicate the nature and quality of the commodity as required under Section 14 of the Act. Thus, it is doubtful whether such bill can be termed as warranty in terms of Section 14 of the Act. The respondent is sought to be impleaded in the present prosecution solely on the basis of the warranty under Section 19 of the Act. When

the prosecution is not able to connect the bill which is considered to be warranty under Section 14 read with Section 19 of the Act with he offending article, there is no other evidence which could substantiate the case of the prosecution against the respondent. If that be so, the prosecution against respondent has to fail. In the present appeal, accused no. 1 is not impleaded. In other words, no acquittal appeal has been filed against him. In that view of the matter, no order can be passed against accused no. 1. This appeal therefore, fails and it is dismissed.

[AKSHAY H. MEHTA, J.]

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